

WATER RIGHT UPDATE

Mark Elison, DNRC
For
COLSTRIP IMPACT ADVISORY GROUP
March 2, 2018

General Outline

1. Statement of Claim 42KJ 94423-00

a. History

i. Claim

Claimed by Montana Power Company 4/22/1982 for industrial use of 250 CFS and 180,991 AF/YR. Place of use claimed is current place of use on abstract. Claimed priority date is December 16, 1970, when the water right was filed with Rosebud County. Point of Diversion was and is the Nichols pumping facility on the Yellowstone River.

ii. Adjudication

During examination and objections to the Temporary Preliminary Decree three major issues were addressed. 1) Flow Rate of 250 CFS was greater than the capacity of the diversion. Flow rate was reduced to 69.27 CFS. 2) Volume could not be confirmed. Volume was reduced to new flow rate operating 24/7/365 which equals 50,151.00 AF/YR. 3) Municipal use was not included in the Temporary Preliminary Decree. By Stipulation the water right could be used for municipal use up to 2 CFS. All of the issue remarks and objections were satisfied and the water right included in the Preliminary Decree.

iii. Preliminary Decree

b. Ownership

Over time as ownership of the SES (Steam Electrical Station) has changed ownership, the water right ownership has been periodically updated. The current owners are

c. Details

- i. Flow rate 69.27 CFS
- ii. Volume 50151.00 AF
- iii. Point of diversion NENWNW Section 24, T6N, R39E Rosebud Co
- iv. Place of use see MAP
- v. Period of diversion/use January 1 through December 31
- vi. Purpose Industrial & Municipal
- vii. No reservoir record (Castle Rock Lake)

2. Ownership Updates/Transfer of Water Rights

a. Process and Timelines

Water rights are appurtenant to the land unless specifically severed in a deed or other transfer document (I AM NOT AN ATTORNEY). Ownership has progressed relatively smoothly over time. Adding or removing owners from a water right is a straightforward process that takes very little time.

3. Change Applications (Point of Diversion, Place of Use, Purpose, Place of Storage)

a. Process and Timelines

File application, 180 days to Correct and Complete, Technical Report, 120 days to a Preliminary Determination (grant, deny, grant with modifications), 45 day public notice period or hearings unit.

i. Historic Use

The fundamental aspect of a statement of claim is the historic beneficial use of water. Regardless of what the abstract says, the DNRC will examine carefully the historic use. In general, the water right owner is entitled to the maximum amount of water put to beneficial use prior to June 30, 1973. The DNRC looks carefully at diverted flow rate, diverted volume and consumptive volume to insure that no increase in water use and, therefore, adverse effect on other water right owners would occur. There are additional requirements to change a water right for more than 4,000 AF or 5.5 CFS under 85-2-402.

Other items of potential interest:

All owners must sign the change application.

Relatively small (300 GPM) groundwater right for SES.